

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

GENE COGGINS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 3:07-cv-0402-MEF-TFM
)	
CITY OF JACKSON'S GAP, <i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b)(1) this case was referred to the undersigned United States Magistrate Judge for review and submission of a report with recommended findings of fact and conclusions of law (Doc. 5, filed May 25, 2007). Pending before the Court is Plaintiff's *Motion for Default and Default Judgment* (Doc. 20, filed July 16, 2007).

On June 28, 2007, the Court granted Plaintiff's *Motion to Proceed In Forma Pauperis*, but issued an order that service of the Complaint would be stayed pending a review of Plaintiff's claims under 28 U.S.C. § 1915. *See* Doc. 12. On July 10, 2007, the Court reiterated this instruction to the parties and specifically stated no answer would be due until the Court orders the Clerk to lift the stay of service and serve the defendants. *See* Doc. 18. The Court has not yet issued such an order. Since there has been no service of the Complaint, no answer is yet required by the defendants. Thus, there can be no default or default judgment.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Plaintiff's

Motion for Default and Default Judgment (Doc. 20) be **DENIED**.

IT IS FURTHER ORDERED that the Plaintiff file any objections to the this *Recommendation* on or before **July 30, 2007**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); *see Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

DONE this 16th day of July, 2007.

/s/Terry F. Moorner
TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE